

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:CORP:B02  
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Date:  
September 30, 2008

### Legend:

Taxpayer =

State A =

Exchange =

Date 1 =

Date 2 =

Dear :

This is in response to a letter dated March 17, 2008 requesting rulings as to the Federal income tax consequences of a series of proposed transactions. The information submitted in that request and in later correspondence is summarized below.

### SUMMARY OF FACTS

Taxpayer, a State A corporation, is a closed-end investment company that has elected to be treated as a regulated investment company (a "RIC") under subchapter M of Chapter 1 of the Internal Revenue Code (the "Code"). Taxpayer regularly distributes its earnings and profits in accordance with section 852(a)(1).

Taxpayer has one class of common stock outstanding, the shares of which are publicly traded on Exchange. Taxpayer does not have outstanding, and will not have

outstanding at the time of the Special Dividend (described below), any option, warrant, convertible debt, or other instrument or right (other than any over-allotment option issued to an underwriter in connection with any public stock offering by Taxpayer) pursuant to which any person has or will have a right to acquire stock from Taxpayer. In the event that any underwriter does have such an over-allotment option at the time of the Special Dividend, the underwriter will not be entitled to receive any portion of the Special Dividend by virtue of holding such option.

For its taxable year ending Date 1, Taxpayer expects to recognize a potentially substantial amount of taxable income or taxable gain from a certain transaction (the "Sale"). In order to eliminate the taxable income or gain under section 852 for that taxable year, and to ensure its qualification as a RIC for that taxable year, Taxpayer intends to make a dividend distribution to its shareholders (the "Special Dividend").

Taxpayer expects to declare the Special Dividend on a date (the "Declaration Date"), either late in the calendar year ending Date 2 or in the calendar year immediately following. The dividend will be declared to its shareholders of record as of a specified date (the "Record Date"); the Declaration Date and the Record Date will be sufficiently in advance of the date the Special Dividend is paid (the "Payment Date") to allow Taxpayer to implement the election process described below. The amount of the Special Dividend will be equal to all of Taxpayer's previously undistributed net income or gain for its taxable year ending Date 1, including the taxable income or gain attributable to the Sale.

The dividend declaration (the "Declaration") will provide that each eligible shareholder will have a right to elect, prior to the Payment Date, to receive such shareholder's proportionate share of the Special Dividend in either: (i) all cash ("Option A"); (ii) all Taxpayer common stock ("Option B"); or (iii) 20 percent cash and 80 percent Taxpayer common stock ("Option C").

Each shareholder will be required to elect Option A, Option B, or Option C for all of such shareholder's shares of Taxpayer common stock. The Declaration will limit the aggregate amount of cash distributed in the Special Dividend to 20 percent of the total amount Distributed (the "Maximum Cash Distribution"). The Declaration will further provide that, in the event any shareholder fails to make an election, such shareholder will be deemed to have elected Option B. Finally, the Declaration will provide that any required fractional shares of Taxpayer common stock will be paid in cash (which will be in addition to the Maximum Cash Distribution).

Although there can be no certainty, Taxpayer anticipates that, pursuant to the election process, some shareholders will elect to receive only shares of Taxpayer common stock and other shareholders will elect to receive only cash.

A shareholder electing to receive shares of Taxpayer common stock will receive a number of shares with a total value equivalent to the amount of cash that the shareholder would have received had the shareholder elected Option A. For this purpose, the total number of shares of common stock that Taxpayer will issue and distribute in the Special Dividend will equal (i) the total amount of the Special Dividend minus the amount of cash payable pursuant to elections under Option A and Option C (but subject to the Maximum Cash Distribution) divided by (ii) the "Average Trading Price," that is, the average trading price of a share of Taxpayer common stock on Exchange as of the close of trading during a three-business-day period ending on the "Pricing Date". The Pricing Date will be a date as close as possible to the Payment Date while being sufficiently in advance of the Payment Date to allow Taxpayer to determine the number of shares that it will issue and distribute in the Special Dividend.

If the total number of shares of Taxpayer common stock for which an election to receive the dividend in cash is made (the "Cash Election Shares") would result in the payment of cash in an aggregate amount that is less than or equal to the Maximum Cash Distribution, then all holders of Cash Election Shares will receive the Special Dividend on all such shares in cash.

If the number of Cash Election Shares would result in the payment of cash in an aggregate amount that is greater than the Maximum Cash Distribution, then:

- (i) each shareholder electing Option C will receive such shareholder's proportionate part of the Special Dividend in 20 percent cash and 80 percent shares of Taxpayer common stock; and
- (ii) each shareholder electing Option A will receive such shareholder's part of the Special Dividend determined as follows:
  - (a) cash equal to (1) the Maximum Cash Distribution minus cash payable to shareholders electing Option C, divided by (2) the number of shares of Taxpayer common stock for which Option A has been elected, and multiplied by (3) the shareholder's total number of shares of Taxpayer common stock; and
  - (b) a number of shares of Taxpayer common stock equal to (1) the shareholder's proportionate share of the Special Dividend, minus (2) the cash payable to the shareholder, and divided by (3) the Average Trading Price.

As a result, if a shareholder elects Option C, that shareholder will receive 20 percent of the Special Dividend in cash. Furthermore, if a shareholder elects Option A, that shareholder will receive at least 20 percent, and as much as 100 percent of the Special Dividend in cash, depending on the number of shareholders electing Options A and C.

## REPRESENTATIONS

Taxpayer has made the following representations with respect to the Special Dividend:

- (a) The total number of shares of common stock that Taxpayer will issue and distribute in the Special Dividend will be determined by dividing the total amount of the Special Dividend, less the total amount of cash to be paid as part of the Special Dividend, by the Average Trading Price.
- (b) The period of time between the determination of the Average Trading Price and the dividend Payment Date will be as short as possible (i.e., that period of time will be only long enough to allow Taxpayer the opportunity to determine the number of shares of common stock that it will have to issue and distribute in the Special Dividend).
- (c) The total amount of cash that Taxpayer will distribute in the Special Dividend will not exceed 20 percent of the total amount of the Special Dividend (plus any cash payable in lieu of fractional shares).
- (d) In the event that the shareholders in the aggregate elect to receive cash in lieu of shares of Taxpayer common stock in an amount less than or equal to the Maximum Cash Distribution, Taxpayer will fully fund the cash component of the Special Dividend. In such a case, all shareholders that elect to receive a cash portion under Option C will receive the requested portion of the Special Dividend in cash, and all shareholders that elect Option A will receive 100 percent of the Special Dividend in cash.
- (e) In the event that the shareholders in the aggregate elect to receive cash in lieu of shares of Taxpayer common stock in an amount in excess of the Maximum Cash Distribution, the shareholders that elect Option C will receive 20 percent of their proportionate share of the Special Dividend in cash, and the shareholders that elect Option A will receive at least 20 percent of their proportionate share of the Special Dividend in cash.

## RULINGS

Based solely on the information submitted and the representations made, we rule as follows:

- (1) All of the cash and shares of Taxpayer common stock distributed by Taxpayer in the Special Dividend will be treated as a distribution of property with respect to Taxpayer's common stock to which section 301 applies. (Sections 301 and 305(b)(1).)

- (2) The amount of the distribution of stock received by any shareholder in the Special Dividend will be considered to equal the amount of the money which could have been received instead. (Section 301(b)(1); Treas. Reg. sections 1.305-1(b)(2) and 1.305-2(b), Example 2.)
- (3) The terms of the Special Dividend will not cause it to be considered preferential under section 562(c) of the Code. Accordingly, provided that the Special Dividend otherwise satisfies all applicable requirements, it will qualify for the dividends paid deduction under section 852 of the Code.

### PROCEDURAL MATTERS

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed as to whether Taxpayer qualifies as a RIC under section 851 of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Frances L. Kelly  
Assistant Branch Chief, Branch 2  
(Corporate)